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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re D.C., A Person Coming Under the Juvenile Court Law. THE PEOPLE, Plaintiff and Respondent, v. D. C., Defendant and Appellant.	B172434 (Los Angeles County Super. Ct. No. KJ23497)

APPEAL from a judgment of the Superior Court of Los Angeles County, Martha Bellinger, Judge. Modified and, as so modified, affirmed.

Jonathan B. Steiner and Dee A. Hayashi, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, and Michael W. Whitaker, Deputy Attorney General, for Plaintiff and Respondent.

A petition filed under Welfare and Institutions Code section 602 alleged that minor D.C. possessed a device for injecting a controlled substance (Health & Saf. Code, § 11364). After a hearing, the juvenile court sustained the petition and placed D.C. on probation for six months pursuant to Welfare and Institutions Code section 725, subdivision (a). D.C. appeals the juvenile court's true finding, contending that the evidence was insufficient to prove he understood the wrongfulness of his actions (*In re Gladys R.* (1970) 1 Cal.3d 855). He further alleges that two conditions of probation imposed by the juvenile court are overbroad and "should be modified to include a knowledge requirement." We modify the challenged probation conditions to reflect knowledge requirements. In all other respects, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*

On September 13, 2002, Fremont Middle School Assistant Principal Jeffrey Prentice interviewed 13-year-old D.C. in his office and asked whether he possessed any item that he should not have at school. D.C. replied that he had some firecracker-type items. D.C. denied possessing any other contraband. A search of D.C.'s backpack revealed three or four syringes, matches, PVC piping, and a plastic baggie. D.C. claimed he had been given the syringes by an older person who forced him to take them.

D.C. later agreed when his mother told Prentice that D.C. had taken the syringes from his diabetic grandfather.

Pomona Unified School District Police Officer Stacy Sarpy interviewed D.C.. In response to her questions, D.C. indicated he knew right from wrong. Sarpy asked D.C. for examples of right and wrong actions. D.C. stated that it was right to give money to charity and wrong to settle a dispute with violence. Sarpy asked whether D.C. knew it was wrong to bring hypodermic needles to school. D.C. said "yes, he knew it was wrong to bring needles to school." D.C. also

admitted that his parents punished him for wrong actions. D.C. stated his parents had taught him it was wrong "to do drugs."

D.C. testified that he used the hypodermic needles to pop pimples. He denied using them to ingest drugs. He stated that his grandfather used them to take medicine, and he had taken the syringes from his grandfather. When asked whether he knew people used hypodermic needles to "shoot [] up drugs, dope?" he replied, "No. My Grandpa uses them to take medicines so-- "

D.C. admitted that he had falsely told Sarpy that a Mexican-American man had told him to put the syringes in his backpack. D.C. testified that he made up the story because he was frightened and embarrassed, and had never been in trouble before. He also admitted falsely telling Prentice that he had obtained the needles from an unknown person. D.C. did not recall admitting to Officer Sarpy that he knew it was wrong to have the needles. D.C. had written in a statement that he intended to "turn the needles in after school." He testified that he did not know it was wrong to pop pimples with the syringes or wrong to carry them around.

D.C.'s mother testified that she had discussed right and wrong with D.C., and had told him it was wrong to take illegal drugs. She did not, however, tell him it was wrong to carry his grandfather's hypodermic needles.

2. *Procedural background.*

The juvenile court denied D.C.'s motion to dismiss on the ground the People failed to establish he knew the difference between right and wrong. It sustained the petition, stated that the offense was a misdemeanor, found unusual circumstances existed, and granted probation pursuant to Welfare and Institutions Code section 725, subdivision (a).

DISCUSSION

1. *Sufficient evidence supported the juvenile court's finding that D.C. was aware of the wrongfulness of his actions.*

D.C. asserts the evidence was insufficient to establish he knew the wrongfulness of his actions, as required by Penal Code section 26.

Penal Code section 26 establishes a presumption that children under the age of 14 are incapable of committing crimes, unless there is "clear proof that at the time of committing the act charged against them, they knew its wrongfulness."[1] (Pen. Code, § 26; *People v. Lewis* (2001) 26 Cal.4th 334, 378; *In re Manuel L.* (1994) 7 Cal.4th 229, 231-232; *In re Marven C.* (1995) 33 Cal.App.4th 482, 486.) This provision applies to proceedings under Welfare and Institutions Code section 602. (*In re Manuel L., supra,* at p. 232; *In re Marven C., supra,* 33 Cal.App.4th at p. 486.) To rebut this presumption, the People must prove by "clear and convincing evidence" that the minor appreciated the wrongfulness of the charged conduct at the time it was committed. (*In re Manuel L., supra,* at p. 232.)

"When an appellant asserts there is insufficient evidence to support the judgment, our review is circumscribed. [Citation.] We review the whole record most favorably to the judgment to determine whether there is substantial evidence -- that is, evidence that is reasonable, credible, and of solid value -- from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof. . . . This standard of review applies with equal force to claims that the evidence does not support the determination that a juvenile understood the wrongfulness of his conduct." (*In re Jerry M.* (1997) 59 Cal.App.4th 289, 298; *In re Paul C.* (1990) 221 Cal.App.3d 43, 52.)

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[1] Section 26 provides in pertinent part: "All persons are capable of committing crimes except those belonging to the following classes: [¶] One – Children under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness."

In determining whether the minor understood the wrongfulness of his or her actions, the juvenile court considers the child's age, experience, and understanding. (*In re Gladys R., supra,* 1 Cal.3d at p. 864; *In re Paul C., supra,* 221 Cal.App.3d at p. 52.) The requisite knowledge may be inferred from the circumstances, including the method of commission of the offense and the minor's concealment of his or her actions. (*People v. Lewis, supra,* 26 Cal.4th at p. 378; *In re Paul C., supra,* at p. 52; *In re Jerry M., supra,* 59 Cal.App.4th at pp. 299-300.) The closer the juvenile's age to 14 years, " 'the more likely it is that [he] appreciates the wrongfulness of [his] acts.' [Citations.]" (*In re Paul C., supra,* at p. 53; *In re Marven C., supra,* 33 Cal.App.4th at p. 487.) The testimony of a child's parent regarding his or her instructions to the child and belief in the child's level of understanding is relevant in establishing whether the child knew the wrongfulness of his or her actions. (*In re Paul C., supra,* at p. 53.) A juvenile's conduct and statements during the commission of the crime may evidence an awareness of the wrongfulness of the conduct, as does later fabrication of a story about the crime. (*In re Cindy E.* (1978) 83 Cal.App.3d 393, 400; *In re Paul C., supra,* at p. 53.)

Here, the juvenile court stated it found sufficient evidence based upon (1) D.C.'s general understanding of right and wrong; (2) D.C.'s own statement that he knew it was wrong to bring the needles to school; and (3) D.C.'s statement that he knew it was wrong to use drugs. The fact D.C. had lied about where he had obtained the needles and what he intended to do with them demonstrated his awareness of the wrongfulness of his conduct.

We conclude the evidence was sufficient. Officer Sarpy testified that D.C. admitted he knew it was wrong to have the syringes at school. When Sarpy asked D.C. whether he knew it was wrong to have needles at school, he replied, "yes, he knew it was wrong to bring needles to school." This evidence was by itself sufficient to demonstrate D.C. "clearly appreciate[d] the wrongfulness of [his] conduct." (*In re Gladys R., supra,* 1 Cal.3d at p. 867, fn. omitted.)

Further, the fact D.C. initially lied about the circumstances under which he had obtained the syringes also demonstrated his knowledge that his possession of them was wrong. (*People v. Lewis, supra,* 26 Cal.4th at p. 379; *In re Paul C., supra,* 221 Cal.App.3d at p. 53 [court could infer understanding of wrongfulness of conduct from fact juvenile lied to police officers, denying and minimizing his conduct]; *In re Cindy E., supra,* 83 Cal.App.3d at p. 400.) Likewise, D.C.'s story that he intended to "turn in" the syringes after school also evidenced his knowledge that possession of them was wrong. Had he believed possession of the syringes was proper, there would have been no reason for him to concoct a story about turning them in.

Finally, D.C.'s age, 13 years and 2 months, was relatively close to age 14 and thus tended to support the finding he understood the wrongfulness of his conduct. (*In re Marven C., supra,* 33 Cal.App.4th at p. 487 [age of 13-year, 8-month old minor supported finding of knowledge; " '[I]t is only reasonable to expect that generally the older a child gets and the closer [he] approaches the age of 14, the more likely it is that [he] appreciates the wrongfulness of his acts.' [Citations.]"]; *In re Paul C., supra,* 221 Cal.App.3d at p. 53 [fact minor was 13 years, 4 months old at time of offenses supported finding of knowledge]; *In re Cindy E., supra,* 83 Cal.App.3d at p. 399.)

D.C. argues, however, that the charged crime was possession of the syringes, not violation of school rules. The evidence showed only that he knew it was wrong to possess the syringes at school, not that it was wrong to possess syringes in general. To the contrary, he argues, because he had seen his grandfather lawfully possess and use the syringes to treat his diabetes it must be inferred that he believed it was lawful to possess the syringes when not at school.

This argument is unavailing. Nothing in *Gladys R.* or the other authorities cited by the parties suggests that the minor must know the precise contours of the law. To the contrary, the juvenile must appreciate "the wrongfulness of [his or her] conduct" or "acts." (*In re Gladys R., supra,* 1 Cal.3d at p. 862 ["clear proof

must show that a child under the age of 14 years at the time of committing the act appreciated its wrongfulness"]; *People v. Lewis, supra,* 26 Cal.4th at p. 378 [presumption of minor's incapacity may be rebutted by clear and convincing evidence the minor "knew the act's wrongfulness"]; *In re Marven C., supra,* 33 Cal.App.4th at p. 486 [" 'Only those minors over the age of 14 . . . and those under 14 who – as demonstrated by their age, experience, conduct, and knowledge – clearly appreciate the wrongfulness of their conduct rightly may be made wards of the court in our juvenile justice system' "].) Here, the evidence showed D.C. knew it was wrong for him to possess the syringes under the circumstances in which he did. No more was required, and the evidence was sufficient to support the juvenile court's finding.

2. *Modification of the challenged probation conditions is appropriate.*

When the juvenile court ordered probation pursuant to Welfare and Institutions Code section 725, subdivision (a), it also ordered that conditions of probation previously imposed on December 17, 2002, remain in effect. D.C. did not object.

Probation condition 15 required that D.C. not associate with "anyone disapproved of by parents/probation officer." Condition 21 stated, "Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places where users congregate." D.C. challenges these two conditions, contending they are constitutionally overbroad in violation of his First and Fourteenth Amendment rights, because they do not contain a knowledge requirement. He requests that we modify the conditions to include such a requirement. The People contend D.C.'s failure to object to the probation conditions waives his claim on appeal. They further posit that a knowledge requirement is implied in the probation conditions.

Generally, the failure to object to probation conditions at sentencing waives the claim on appeal. (*People v. Welch* (1993) 5 Cal.4th 228, 237.) However, it has also been held that constitutional claims presenting pure questions of law that

can be resolved without reference to the particular sentencing record developed below *may* be raised on appeal. (*In re Justin S.* (2001) 93 Cal.App.4th 811, 815; cf. *People v. Welch, supra,* at p. 235.) The California Supreme Court is currently considering whether a challenge to a condition of juvenile probation is waived or forfeited by the failure to object. (*In re Sheena K.* (2004) 116 Cal.App.4th 436, review granted June 9, 2004, No. S123980.)

D.C.'s claim presents a pure question of law. Therefore, pending further guidance from the Supreme Court, we disagree that D.C. has waived the claim by failing to object. (*In re Justin S., supra,* 93 Cal.App.4th at p. 815.) We further agree with D.C. that, absent a knowledge requirement, the challenged probation conditions are unconstitutionally overbroad. (*Id.* at p. 816; *People v. Lopez* (1998) 66 Cal.App.4th 615, 627-629; *People v. Garcia* (1993) 19 Cal.App.4th 97, 101-103.) Accordingly, we order probation conditions 15 and 21 modified to add knowledge requirements.

DISPOSITION

Probation condition 15 is modified to read: "Do not associate with anyone known to you to be disapproved of by parents/probation officer." Probation condition 21 is modified to read, "Do not use or possess narcotics, controlled substances, poisons, or related paraphernalia; stay away from places where you know users congregate." In all other respects, the order granting probation pursuant to Welfare and Institutions Code section 725, subdivision (a) is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.